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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 ON DEMAND DIRECT RESPONSE, LLC
7 *et al.*,

8 Plaintiffs,

9 v.

10 SHANA LEE MCCART-POLLAK D/B/A
11 LOL BUDDIES ENTERPRISES

12 Defendant,

13 *And all related actions.*

Case No. 2:15-cv-01576-MMD-NJK

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE
NANCY J. KOPPE

14 Before the Court is Magistrate Judge Nancy J. Koppe's Report and
15 Recommendation ("R&R" or "Recommendation") (ECF No. 341), regarding the Court's
16 prior order for On Demand Direct Response, LLC, On Demand Direct Response III, LLC
17 (collectively "On Demand"), and attorney Jeffrey Miller to show cause why they should not
18 be sanctioned and held in contempt (ECF No. 297) as well as Shana McCart-Pollak's
19 motions to hold Mr. Miller in contempt and for sanctions (ECF Nos. 292, 292). To date,
20 no objections have been filed by On Demand or Miller. The R&R set the civil contempt
21 hearing for June 18, 2018. Neither Miller nor a corporate representative of On Demand
22 appeared at the hearing. Local counsel for On Demand, Tony Abbatangelo, did appear.
23 He represented that he informed Miller of the June 18, 2018 hearing but did not receive
24 any response from Miller.

25 This Court "may accept, reject, or modify, in whole or in part, the findings or
26 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party
27 timely objects to a magistrate judge's report and recommendation, then the court is
28 required to "make a *de novo* determination of those portions of the [report and

1 recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). Where a party fails
2 to object, however, the court is not required to conduct “any review at all . . . of any issue
3 that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed,
4 the Ninth Circuit has recognized that a district court is not required to review a magistrate
5 judge’s report and recommendation where no objections have been filed. *See United*
6 *States v. Reyna-Tapia*, 328 F.3d 1114, 1122 (9th Cir. 2003) (disregarding the standard of
7 review employed by the district court when reviewing a report and recommendation to
8 which no objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
9 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s decision in *Reyna-Tapia* as adopting the
10 view that district courts are not required to review “any issue that is not the subject of an
11 objection”). Thus, if there is no objection to a magistrate judge’s recommendation, then
12 the court may accept the recommendation without review. *See, e.g., Johnstone*, 263 F.
13 Supp. 2d at 1226 (accepting, without review, a magistrate judge’s recommendation to
14 which no objection was filed).

15 Nevertheless, this Court finds it appropriate to engage in a *de novo* review in order
16 to determine whether to adopt the R&R. As the Court explained at the June 18, 2018
17 hearing, upon review of the R&R and the filings in this case, the Court agrees and accepts
18 Judge Koppe’s recommendation to enter default judgment on McCart-Pollak’s
19 counterclaims against On Demand. McCart-Pollak has fourteen (14) days to submit an
20 affidavit regarding damages.

21 The Court also accepts Judge Koppe’s recommendation to find Miller and On
22 Demand in civil contempt and to compel On Demand and Mr. Miller to respond to McCart-
23 Pollak’s discovery requests. The Court finds that there is clear and convincing evidence
24 that On Demand and Mr. Miller violated at least three court orders, including the order
25 requiring On Demand to obtain counsel, the order requiring On Demand to produce
26 documents, and the order requiring a corporate representative to appear at the show
27 cause hearing. (ECF Nos. 99, 289, 316.) On Demand and Miller have failed to take any
28 steps, let alone reasonable steps, to comply with these orders.

1 As the Ninth Circuit recently reiterated, "A court may wield its civil contempt powers
2 for two separate and independent purposes: (1) 'to coerce the defendant into compliance
3 with the court's order'; and (2) 'to compensate the complainant for losses sustained.'" *Shell*
4 *Offshore Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 629 (9th Cir. 2016) (quoting *United States*
5 *v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947)). Because On Demand's
6 responses to the discovery requests at issue are needed for McCart-Pollak to prosecute
7 her third-party claims, the Court will wield its civil contempt power to compel On Demand
8 to respond to these discovery requests. Accordingly, the Court finds that find that On
9 Demand and Miller are in contempt of the Court's orders. As sanctions, they must (1)
10 respond to McCart-Pollak's request for production nos. 3, 4, 5, 8, 15, 17, 18, 20 and 21
11 within thirty (30) days from June 18, 2018; and (2) reimburse McCart-Pollak for reasonable
12 attorneys' fees incurred in bringing the motions that led to these sanctions. Failure to do
13 so will result in further monetary sanctions. McCart-Pollak's counsel has fourteen (14)
14 days to submit an affidavit of fees. On Demand's local counsel is directed to send the
15 minutes of the Court's June 18, 2018 hearing and this order to Miller and On Demand by
16 mail and email. Local counsel must submit certification that he has complied by sending
17 the aforementioned documents to Miller and On Demand within three (3) days of this
18 order.

19 It is hereby ordered that the Magistrate Judge's Report and Recommendation (ECF
20 No. 341) is accepted and adopted.

21 It is further ordered that the Clerk enter default judgment in favor of McCart-Pollak
22 on her counterclaims against On Demand.

23 DATED THIS 19th day of June 2018.

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25 

26 MIRANDA M. DU
27 UNITED STATES DISTRICT JUDGE
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